IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 554 OF 2004

1. M/s. Valentine Ship Services,
a proprietorship concern,
represented herein by their
sole proprietor Mrs. Benedita
Fernandes, major, widow
of late Peter Dias, having their
address at lst Floor, F.X.Towers,
Opp. M.P.T. Hall, Vasco da Gama,
Goa, and

2. Mr. Valentine Dias, having his
address at lst Floor, F. X. Towers,
Opp. M.P.T. Hall, Vasco da Gama,
Goa. .... Petitioners.

Versus

1. Mr. Reiner Luz de Souza, major,
married, businessman, having
his address at c/o M/s. Luzco,
lst Floor, Noreen Aprts., Opp.
Gomantak Press, St. Inez, Panaji,]
Goa, and

2. Mr. Conrad D'Silva, major,
retired, r/o H.No. not known,
Alto Bela Vista, Sangolda,
Bardez, Goa. .... Respondents.

Mr. S. G. Bhobe, advocate for the petitioners.

Mr. A. R. Kantak, advocate for respondent no.1.

CORAM : A. P. LAVANDE, J.

DATE : 17th March, 2005.

ORAL JUDGMENT

Heard Mr. Bhobe, learned counsel for the petitioners and Mr. Kantak, learned counsel for respondent no.1. Respondent no.2 though served, has chosen not to put in appearance.

2. Rule. By consent heard forthwith.

3. By this petition, the petitioners take exception to Order dated 9th August, 2004, passed by Civil Judge, Senior Division, Vasco da Gama, in Special Civil Suit No.25/03/A, permitting the petitioners to file written statement upon deposit of the amount of Rs.8,55,068.50 p. by them.

4. Respondent no.1 filed the abovementioned suit against the petitioners and respondent no.2 for recovery of the amount of Rs.8,55,068.50 p.. The petitioners did not file written statement within a period of 90 days from the date of service of summons upon them. Thereafter on 23rd January, 2004, the petitioners filed an application under Order IX Rule 7 of the Civil Procedure Code, after a delay of about two months and seven days. The application was supported by affidavits and some documents. The application was opposed by respondent no.1 and the trial Judge after hearing the parties and relying upon the judgment of this Court in the case of ***Iridium India Telecom Ltd. vs. Motorola Inc. and Another,*** reported in 2004

(1) Mh.L.J. 532, held that the trial Court had no jurisdiction to extend the time to file written statement in terms of Section 148 C.P.C. The trial Court also held that the time limit of 90 days prescribed for filing written statement cannot be extended further with the aid of Section 148. However, the trial Court after dismissing the application of the petitioners filed under Order IX Rule 7 C.P.C., and also the application for condonation of delay, permitted the petitioners to file written statement subject to deposit of the above amount of Rs.8,55,068.50 p. before the Court within a period of one month.

5. Mr. Bhobe, learned counsel appearing for the petitioners placing reliance on the judgment of this Court in the case of ***Chintaman Sukhdeo Kaklij & Ors. vs. Shivaji Bhausaheb Gadhe & Ors.***, reported in 2004(4) Mh.L.J. 739, has submitted that the trial Court could have extended the period for filing the written statement in the event exceptional and special circumstances were made out. According to the learned counsel, the petitioners have established such exceptional and special circumstances and, therefore, the trial Court ought to have permitted the petitioners to file written statement. The learned counsel further submitted that the trial Court had no jurisdiction to permit the petitioners to file written statement by making conditional order of deposit of the amount as ordered by him.

6. Mr. Kantak, learned counsel appearing for the

respondent no.1 has supported the impugned Order and submitted that substantial justice has been done in the case and, therefore, no case is made out for interference in exercise of writ jurisdiction.

7. I have considered the submissions made by the learned counsel. I find considerable force in the submission of Mr. Bhobe, learned counsel for the petitioners. The Division Bench of this Court in the case of ***Chintaman Sukhdeo Kaklij*** (supra) has held that if exceptional and special circumstances are made out, the Court can extend the period of 90 days for filing written statement. That being the legal position, the trial Judge ought to have exercised his discretion to find out whether exceptional and special circumstances were made out by the petitioners for seeking extension of time to file written statement. This exercise was obviously not done by the trial Court. Therefore, in my opinion, the impugned Order deserves to be set aside and the same is hereby quashed. The trial Court after hearing both sides and on the basis of the material already produced on record, shall decide whether exceptional and special circumstances have been made out by the petitioners as laid down in the judgment of this Court in the case of ***Chintaman*** (supra).

8. In the light of the above discussion, the petition stands allowed. Rule is made absolute in the aforesaid terms. Parties are directed to bear their own costs. The parties to appear before the

trial Court on 6th April, 2005 at 10 a.m.

A. P. LAVANDE, J.

mc.